

to be used in the APH yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(q) *Verifiable records*—Contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report.

(r) *Verifier*—A person authorized by the FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends which will require determination of the APH yield by the FCIC.

§ 400.53 Yield certification and acceptability.

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage for annual crops or insurable acres for perennial crops, as well as harvested and appraised production by unit.

(2) The insured must certify the accuracy of the information.

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The re-

ported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in voidance of the crop insurance contract, as well as criminal or civil false claims penalties pursuant to applicable Federal criminal or civil statutes.

§ 400.54 Submission and accuracy of production reports.

(a) The insured is solely responsible for the timely submission and certification of accurate, complete production reports to the agent. Production reports must be provided for all planted units.

(b) Records may be requested by the FCIC, or an insurance company reinsured by the FCIC, or by anyone acting on behalf of the FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective

insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier, along with any requested and required supporting records for determination of an approved APH yield.

(d) The verifier will determine if the certified production reports are acceptable and calculate the approved APH yield.

§ 400.55 Qualification for actual production history coverage program.

(a) The approved APH yield is calculated from a database containing a minimum of four yields and will be updated each subsequent crop year. The database may contain a maximum of the 10 most recent crop years and may include actual, assigned, and adjusted or unadjusted T or D-Yields. T or D-Yields, adjusted or unadjusted, will only occur in the database when there are less than four years of actual and/or assigned yields.

(b) The insured may be required to provide production records to determine the approved APH yield, if production records for the most recent crop year are available. If acceptable records of actual production are provided, the records must be continuous and contain at least the most recent crop year's actual yield.

(1) If no acceptable production records are available, the approved APH yield is the adjusted T or D-Yield (65 percent of T or D-Yield).

(2) If acceptable production records containing information for only the most recent crop year are provided, the three T or D-Yields adjusted by 80 percent will be used to complete the minimum database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two T or D-Yields adjusted by 90 percent and the two actual yields will be used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the

three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted T or D-Yields or a combination of actual and unadjusted T or D-Yields.

(7) Producers who add land or new practice, types and varieties to their farming operations and who do not have available records for the added land, practice, types or varieties may have approved APH yields for the added land, practice, types or varieties that are based on adjusted or unadjusted T or D-Yields as determined by FCIC.

(8) If the producer's crop is destroyed or if it produces a low actual yield due to insured causes of loss, the resulting average yield may qualify for catastrophic yield adjustment according to FCIC guidelines. APH yields qualifying for catastrophic yield adjustment may be adjusted to mitigate the effect of catastrophic years. Premium rates for approved APH yields, which are adjusted for catastrophic years, may be based on the producer's APH average yield prior to the catastrophic adjustment or such other basis as determined appropriate by FCIC.

(c) If *no insurable acreage of the insured crop is planted* for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the APH yield calculations.

(d) Actual yields calculated from the claim for indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) Optional units are not available to an insured who does not provide acceptable production reports for at least the most recent crop year with which to calculate an approved APH yield.